IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.403 OF 2005

Gopkumar Soman Nair .. Applicant.
(Orig.Complainant)

V/s.

Sunil Hasmukhbhai Gathiya .. Respondents.
& Others (Nos.1&2 Orig.Accused Nos.1&2)

Shri.M.A.Choudhari for the applicant.
Shri.Prakash Naik for respondent No.1 & 2.
Shri.P.A.Pol, A.P.P. for the State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8TH DECEMBER, 2006

P.C.:

. Heard Shri.Choudhari, learned counsel appearing for the applicant-original complainant and Shri.Naik for respondent Nos.1 & 2.

. The grievance of the complainant is that the

original accused Nos.1 & 2 are acquitted by the Trial Court for the offences punishable u/s.436, 427, 325, 504 & 506 of I.P.C. He submits that the incident is not denied. The injuries are also not denied. Further, the original complainant was in the shop at the relevant time is also not denied. In such circumstances, it cannot be said that the accused are entitled to any benefit as extended by the Trial Court. The judgement, is therefore, erroneous and perverse and requires interference in revisional jurisdiction.

. With the assistance of the learned counsel appearing for both sides, I have gone through the impugned judgement dated 18th August, 2005. The prosecution story is set out therein. The learned Judge framed the necessary points. The learned Judge observed that number of witnesses are named in the chargesheet but the vital witnesses have not been examined. The eye witnesses working in the hotel are not available to the prosecution. The witnesses, who have examined by the prosecution, include the medical officer. The learned Trial Judge has dealt with their testimony in detail and has observed that the tenant of the premises, which are adjacent to the premises of the present applicant has not been examined.

It is these premises which are given on tenancy basis. It is the place of incident. The tenant Krishna Pillai is still running a tyre workshop therein. There is no explanation forthcoming as to why the said witness was not examined by the prosecution. Further, the prosecution version that the shop was set on fire by the accused has not been proved by leading evidence at all. The medical officer points out that the injuries sustained by the complainant can be sustained by a fall under the influence of liquor or by falling from a moving motorcycle. This is a possible view. The injuries can be sustained either by fall or otherwise is the case.

. The learned Judge therefore held that this is a possible view emerging in the totality of the circumstances. The conclusion is reached after appreciation of the entire materials placed on record. Considering the facts and circumstances of the case, the view taken by the learned Trial Judge is a possible view which does not require any interference.

. Revision application is therefore dismissed.

(S.C.Dharmadhikari, J.)